Bail Slip

The Petitioner/accused (A.Kannan) in both the Crl.RCs was released on bail as per order of this Court dated 20.12.2004 made in Crl.MP.No.12310/04 and Crl.MP.No.12313/04 in Crl.R.C.No.2034/04 and Cr.R.C.No.2035/04 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.2034 and 2035 of 2004

A.Kannan ..Petitioner /accused in both revisions/Appellant/ Accused.

vs.

State by Inspector of Police
C.C.I.W.C.I.D.Police,
Coimbatore
(Cr.No.4/2001) .. Respondent/complainant in both Revisions/Respondent/ Complainant

These Revision petitions filed under Section 397 & 401 Crl.RC are filed against judgment dated 30.11.2004 in C.A.Nos.30 and 31 of 2004 respectively passed by the Additional District & Sessions Judge, (FTC-1), Coimbatore , modifying the judgment made in C.C.Nos.66 and 67 of 2002 respectively on the file of the Judicial Magistrate No.IV, Coimbatore, dated 19.10.2003.

For Petitioner (in both Revisions) : Mr.A.Bobblie
For Respondent (in both Revisions) : Mr.V.R.Balasubramaniam Additional Public Prosecutor.

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COMMON ORDER

These revision petitions have been preferred against the judgment in C.A.Nos.30 and 31 of 2004 respectively passed by the learned Additional Sessions Judge, (FTC-1) Coimbatore, which had arisen out of the judgment in C.C.Nos.66 and 67 of 2002

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respectively on the file of the Judicial Magistrate NO.IV, Coimbatore. Both the cases have been filed against the same accused Kannan/the revision petitioner in both the revisions.

2. In C.C.NO.66 of 2002, the charge against the accused is under Section 408 of IPC. The short facts in the case is that between the period 27.12.1993 and 31.5.1998, when the accused was working as a Salesman in the Cooperative Society,Kothagiri(Liquor Unit), he had received an advance of Rs.1,35,136/65ps for the purpose of purchasing liquor bottles from TASMAC. But without purchasing the said liquor bottles from the TASMAC, he had misappropriated a sum of Rs.1,35,136/65ps.

2a. In C.C.No.67 of 2002 the accused has been charged under Section 408 of IPC for having failed to account for a sum of Rs.2,86,838 being the sale proceeds in the above said cooperative society, Kothagiri. According to the prosecution, the said amount of Rs.2,86,838 was the amount collected in the said Cooperative society on 31.5.1998 by way of selling the liquor bottles. The accused has not brought the said sale amount of Rs.2,86,838/- to the accounts of the said Cooperative society,Kothagiri but had misappropriated the same.

3. In C.C.No.66 of 2002, P.Ws 1 to 7 were examined and Exs P1 to P15 were marked. In C.C.No.67 of 2002, Pws 1 to 8 were examined and Exs P1 to P20 were marked.

4. P.W.1 in both C.C.No.66 of 2002 and C.C.No.67 of 2002 are one and the same person viz., Thiru Chandran, the Deputy Registrar of Cooperative Society. On the complainant received against the administration of Cooperative society(liquor Unit), Kothagiri, the former Director of Cooperative society had directed him(P.W.1) as per his proceedings No.6552/98/V.1 dated 28.8.1998 to conduct an enquiry and submit a report under Section 81 of the Cooperative Societies Act and accordingly he had directed Thiru Gopalan Ajithkumar, the Cooperative Sub Registrar to conduct the enquiry and complete the same within three months and to file a report and on his request, the date has been extended from 23.11.1998 to 27.11.1998 under ExP1 and that he had filed the report after the completion of his enquiry on 25.2.1999 and as per his report, he came to know that the accused had misappropriated a total sum of Rs.4,21,974/65ps(the subject matter in C.C.No.66 of 2002 is Rs.1,35,136/65ps and the subject matter in C.C.No.67 of 2002 is Rs.2,86,838/-). Ex P2 is the complaint preferred by P.W.1 before the Inspector of Police, C.C.I.W.C.I.D(in both the cases). Ex P3 is the order of P.W.1 dated 28.8.1998 passed under Section 81 of the Cooperative Societies Act. Ex P4 is the letter of requisition of the Enquiry Officer for extension of time dated 23.11.1998.

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4a. P.W.2 Thiru A.Raji, an Assistant in the said Cooperative Society who would depose that the accused was working in the same Cooperative society from 1996 to 1998 as a Salesman and that as per the stock register for the year 1998, there was no stock on hand and there was also no cash on hand. Ex P5 is the order passed by the President of the Society, directing him to audit the account and that Ex P6 is the audit report.

4b. P.W.3 is the then cashier of the above said society till 1999. According to him, the salesman shall deposit the sale proceeds daily with him before 1.00p.m., on the following day and to get receipt from him. He would depose that the accused had received Rs.4,00,000/- towards advance for the purchase of liquor bottle and out of the said amount of Rs.4,00,000/- the accused had purchased the liquor bottle except for a sum of Rs.1,35,000/- and that from enquiry, he came to know that the accused had misappropriated the said amount of Rs.1,35,000/- without purchasing the liquor bottle.

4c. P.W.4 in C.C.No.66 of 2002 is Vasanthakumari , the then Assistant of the abovesaid society who would depose that as on 31.5.1998, the accused owes a sum of Rs.4,39,024/- to the society and the relevant entries are in Ex P7 at page No.44 and that the accused, after admitting his liability to the tune of Rs.4,39,024/- has signed in Ex P7 at page No.44 in her presence and she has also endorsed the same by putting her initials below his(the accused) signature. She would further admit that the accused had repaid a sum of Rs.79,209/- in June 1998 and after giving credit to the said amount of Rs.79,209/-, the balance to be paid by the accused comes to Rs.3,59,815/-. The relevant entries at page 45 in the ledger is Ex P8.

4d. P.W.4 in C.C.No.67 of 2002 Mrs. Sundari, an Assistant in the said society during the period 1985 to 2002. According to her, on 7.2.1998, the accused had received an advance of Rs.1,35,000/- for the purpose of purchasing the liquor bottle for the society. The relevant entry is Ex P7. But the accused has not produced any liquor bottle from the said amount. Through her, Exs P8 to P11 entries were made in the ledgers.

4e. P.W.5 in C.C.No.66 of 2002 Tmt.Lessi. She is the auditor for the Cooperative Society, Kothagiri. According to her, as on 31.5.1998, the accused Kannan as a salesman of the said society owes Rs.4,39,024/- to the society and that the accused had received Rs.1,35,136/65ps by the purchase of liquor bottle for the society. But he neither purchased the liquor bottle nor repaid the amount to the society thereby misappropriated a sum of Rs.1,35,136/65ps received by him(the accused) from the society for the purchase of the said liquor bottle from TASMAC.

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4f.P.W.5 in C.C.No.67 of 2002 is Tmt Vasanthakumari. According to her, as per ExP12, the accused owes Rs.4,39,024 to the society and that he has repaid Rs.79.209/- in June 1998 and after giving credit to the said amount,the balance to be paid by the accused comes to Rs.3,59,815/-. The relevant entry in the ledger at Page 45 is Ex P13.

4g.P.W.6 in C.C.No.66 of 2002 is Thiru K.K.Rajan, the then President of the Cooperative society,Kothagiri. He would admit that the accused is a Salesman of the society during the relevant period and that during audit, it was brought to light that Rs.2,86,838 is the amount found in shortage in the accounts of the society and that the accused had failed to pay the advance amount of Rs.1,35,136/65ps received by him for the purchase of liquor bottle for the society and the relevant entries in the debit ledger are Ex.P.11 and Ex P12 at page No.160. The relevant entry in Ex P13 Stock Register is at page No.175. As per the said entry, the accused owes a sum of Rs.1,35,136/65ps to the society.

4h. P.W.6 in C.C.No.67 of 2002 is Thiru Samuel. He would also corroborated the evidence of P.W.6 in C.C.No.66 of 2002 as to the effect that the accused owes a sum of Rs.1,35,135/65ps to the society as on 31.5.1998.Ex P14 is the receipt signed by the accused to show that he had received Rs.1,10,000/- from the President of the society.

4i. P.W.7 in C.C.No.66 of 2002 is Thiru Senthilkumar, the Investigation Officer who would depose that after registering the case under C.C.I.W.C.I.D Crime No.4/2001 under Sections 408 and 477 A of IPC, on the basis of the complaint Ex P1, he (P.W.7) has prepared F.I.R. which is marked as Ex P14. He has examined the witnesses and recorded their statements. After completing the investigation,he has filed the charge sheet against the accused under Section 408 of IPC on 31.12.2001.

4j. P.W.7 in C.C.No.67 of 2002 is Thiru K.K.Rajan, the President of the Co-operative society, Kothagiri. According to him, the accused was working during the relevant period as a salesman and as per the accounts of the society,in May 1998, the accused owes to the society,a sum of Rs.1,35,136/65ps and the relevant entries in the debit ledger is Ex P1 and the relevant entries in Ex P16 at page 160 is Ex P17. As per Ex P18, entry at Page No.175, the accused owes a sum of Rs.135,136/65ps.

4k. P.W.8 in C.C.No.67 of 2002 Thiru Senthilkumar is the Investigation Officer. On the basis of the complaint Ex P1, he had registered the case under C.C.I.W.C.I.D. Cr.No.4/2001 against the accused under Sections 408 and 477 A of IPC .The First Information Report is Ex P19. He has examined the witnesses and recorded their

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statements and after completing the investigation, has filed the charge sheet against the accused under Section408 of IPC.

5. On the basis of the above said evidence, when incriminating circumstances were put to the accused, the accused would deny his complicity with the crime.

6.After going through both oral and documentary evidence let in by both sides, the learned Trial Judge has come to a conclusion that the prosecution has proved the charge against the accused in both the cases and accordingly convicted and sentenced the accused to undergo one year rigorous imprisonment and slapped a fine of Rs.1000/- with default sentence in both the cases.

6a. Against the findings of the learned trial Judge, the accused has preferred C.A.No.30 of 2004 before the Additional District and Sessions Judge, Fast Track Court No1, Coimbatore against the judgment in C.C.No.66 of 2002 on the file of Judicial Magistrate No.IV, Coimbatore and the accused has preferred C.A.No.31 of 2004 before the Additional District and Sessions Judge, Fast Track Court No1, Coimbatore against the judgment in C.C.No.67 of 2002 on the file of Judicial Magistrate No.IV, Coimbatore. The learned first appellate Judge, while confirming the conviction has modified the sentence to three months instead of one year rigorous imprisonment which necessitated the accused to prefer these revisions.

7. Now the point for determination in these revisions is whether the enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act has been filed in time by the Enquiry Officer?

9. Heard Mr.A.Bobblie, learned counsel appearing for the revision petitioner in both revisions and Mr. V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and considered their rival submissions.

10. When these revision petitions were taken up for hearing, the learned counsel appearing for the revision petitioner would contend that the Enquiry Officer Thiru Gopalan Ajith Kumar who was appointed under section 81 of the Tamil Nadu Cooperative Societies Act to enquire into the complaint against the accused by P.W.1 was not examined before the trial Court and that there is no date mentioned below his signature in Ex P15 in C.C.No.67 of 2002(Ex P10 in C.C.No.66 of 2002). The fact that Ex P15 in C.C.No.67 of 2002 which is exhibited as ExP10 in C.C.No.66 of 2002 is undated has been admitted in the cross examination by P.W.1 also. But at the top of the enquiry report Ex P15 in C.C.No.67 of 2002(Ex P10 in C.C.No.66 of 2002), the date has been mentioned as 14.7.1999.

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11. It is not the case of the prosecution that the date 14.7.1999 has been tampered with by the accused. Even in the brown colour wrapper sheet to enquiry report Ex P15 in C.C.No.67 of 2002 (Ex P10 in C.C.No.66 of 2002) the date of the enquiry report has been mentioned as 14.7.1999. As per Section 81 of the Tamil Nadu Cooperative Societies Act, the inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate. So as per the above said provision of law, it is mandatory on the part of the enquiry officer to complete the enquiry and to file his report within nine months from the date of order of enquiry.

12. According to P.W.1, the Deputy Registrar of Cooperative Societies, the enquiry was ordered on 28.8.1998 by the Registrar of Cooperative societies and that cooperative Sub Registrar, Thiru Gopalan Ajithkumar was appointed as an Enquiry Officer and that he had applied for extension of time for completing the enquiry and on his request, the time was extended from 23.11.1998 to 27.2.1999 and that subsequently, also the time was extended for another three months. But absolutely, there is no document produced by P.W.1 to show that the further time of three months was given from 27.2.1999. Ex P1 shows that three months time has been extended from 27.11.1998 to 27.2.1999.. Even though, P.W.1 would depose that the enquiry officer has filed his report on 25.2.1999, Ex P15 in C.C.No.67 of 2002(Ex P10 in C.C.No.66 of 2002),the enquiry report shows that it was filed by the enquiry officer only on 14.7.1999. Under such circumstances, the complaint itself is barred by limitation under Section 81(4) of the Tamil Nadu Cooperative Societies Act 1983. The point is answered accordingly.

13. In fine, Crl.R.C.No.2034 and 2035 of 2004 are allowed setting aside the Judgment in C.A.No.30 of 2004 and C.A.No.31 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore. The accused is acquitted from the charges levelled against him. The fine amount,if any paid, shall be refunded to the accused. The bail bond shall stand cancelled.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To,

1.The Additional District and Sessions Judge, Fast Track Court, No.1 Coimbatore
2. The District & Sessions Judge, Coimbatore.
3.The Judicial Magistrate No.IV , Coimbatore.
4.-do- through the Chief Judicial Magistrate, Coimbatore.
5.The Inspector of Police, CCIWCID Police, Coimbatore.|
6. The Public Prosecutor, High Court, Madras.
7. The Superintendent, Central Prison, Coimbatore.

+ 2 ccs to Mr. A. Bobblie and L. Mouli, Advocates SR Nos.36873 & 36874

GG(CO)
SR/27.6.2007 Crl.R.C.Nos.2034 and 2035/2004

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